

REMARKS/ARGUMENTS

Claims Rejected Under 35 U.S.C. §102(b):

The Examiner rejected Claims 1, 3 and 9 under 35 U.S.C. § 102(b) as being anticipated by Barile, Sr. (U.S. Patent 6,406,096). Applicant has amended independent Claim 1 to include limitations not disclosed in Barile, Sr. Applicant respectfully submits amended Claim 1, and dependent Claims 3 and 9, are not anticipated by Barile, Sr. due to the lack of an express or inherent description of every element of the Applicant's invention, and the lack of a showing of the elements of the Applicant's invention in the arrangement required by the claims as now presented.

Section 2131 of the Manual of Patent Examining Procedure describes the basis for anticipation under 35 U.S.C. §102. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed.Cir. 1989). "The elements must be arranged as required by the claim" *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990).

As set forth above, the Examiner rejected Claims 1, 3 and 9 under 35 U.S.C. §102(b) as being anticipated by Barile, Sr. The Examiner stated that Barile, Sr. discloses a rear support member (54), identified as a U-shaped holder receptor (54) in Barile, Sr. Further, the Examiner stated that Barile, Sr. discloses right and left frame support members, identified as a second holder receptor (74), which extend laterally inwardly from the seat member (frame members, 124, 126). The Examiner also stated

that a planar spring member (14) is disclosed, along with front and rear fixation plates (74, 54) overlying each spring member (14, 34).

Applicant respectfully submits that amended Claim 1 includes a rear support member interposed laterally inwardly from respective right and left back support lower ends, with the rear support member forming a back frame cross-member **58** extended to connect between the right and left back support lower ends. Barile, Sr. does not disclose a back frame cross-member extending the width between the U-shaped holder receptors (54, 54). Therefore, Barile, Sr. does not anticipate each element of Applicant's amended Claim 1, nor does Barile, Sr. anticipate Applicant's new Claims 24 - 25 (discussed hereinbelow). Barile, Sr. discloses an interior width separation is provided between chair frame members and between holders (54, 74) to facilitate changing of spring elements in each U-shaped holders (see col. 10, lines 50-60), due to a lack of top, front or rear access to spring members (14, 34) in U-shaped holders.

In view of the above, Applicant respectfully submits that amended Claim 1 is not anticipated under 35 U.S.C. §102(b) by Barile, Sr., due to the lack of each and every element set forth in Applicant's amended claim being found in a single prior art reference. In the alternative, Applicant's amended Claim 1 is not made obvious under 35 U.S.C. §103(a) by Barile, Sr., for the reasons set forth hereinbelow. Applicant respectfully submits that amended Claim 1 is in condition for allowance. Applicant's Claims 2 - 9, as amended, depend from Claim 1 and are deemed to be allowable as depending from an allowable base claim.

Accordingly, the Examiner's rejections under 35 U.S.C. § 102(b) have been traversed, and Applicant respectfully requests withdrawal of the rejections of

Applicant's claims under 35 U.S.C. § 102(b).

Claims Rejected Under 35 U.S.C. §102(e):

The Examiner rejected Claims 1, 2, 6, 9, 18, 19 and 23 under 35 U.S.C. §102(e) as being anticipated by Ware et al. (U.S. Patent 6,471,293). Applicant has amended independent Claims 1 and 18 to include limitations not disclosed in Ware et al. Applicant respectfully submits amended Claim 1, dependent Claims 2, 6, and 9, amended Claim 18 and dependent Claims 19 and 23 are not anticipated by Ware et al. due to the lack of an express or inherent description of every element of the Applicant's invention, and the lack of a showing of the elements of the Applicant's invention in the arrangement required by the claims as now presented.

Section 2131 of the Manual of Patent Examining Procedure describes the basis for anticipation under 35 U.S.C. §102. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed.Cir. 1989). "The elements must be arranged as required by the claim" *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990).

As set forth above, the Examiner rejected Claims 1, 2, 6, 9, 18, 19 and 23 under 35 U.S.C. §102(e) as being anticipated by Ware et al. The Examiner stated that Figures 1, 4 and 5 show structure as claimed, including a rear support member (50) laterally disposed from the back support ends, a right and left front support member (34) extending laterally inwardly from the seat member, a planar spring member (52, 54), and a lower frame cross-member (38).

Applicant respectfully submits that amended Claims 1 and 18 include right and left front support members extended laterally inwardly from respective right and left seat member rear portions, with each front support member having side portions joined to respective seat member rear portions, but with the right and left front support members **66, 66** being spaced apart and lacking a cross-member support therebetween. Ware et al. discloses that a transverse front spring reinforcement bar (34) extends side to side between the two side members (28, 30) near the rearmost ends (see Figs. 1, 2 and 4 and col. 2, lines 57-61). Applicant's amended Claims 1 and 18, and new Claims 24 - 25 (discussed hereinbelow), do not require a front transverse cross-member between right and left front support members **66, 66** for proper operation of the seat assembly relative to a movable back support of a stackable chair. Applicant's amended Claims 1 and 18 distinctly claim the right and left front support members are spaced apart and lack cross-member support therebetween.

In view of the above, Applicant respectfully submits that amended independent Claims 1 and 18 are not anticipated under 35 U.S.C. §102(e) by Ware et al., due to the lack of each and every element set forth in Applicant's amended claim being found in a single prior art reference. In the alternative, Applicant's amended Claims 1 and 18 are not made obvious under 35 U.S.C. §103(a) by Ware et al., for the reasons set forth hereinbelow. Applicant respectfully submits that amended independent Claims 1 and 18 are in condition for allowance. Applicant's Claims 2, 6, and 9 depend from Claim 1 and are deemed to be allowable as depending from an allowable base claim. Applicant's Claims 19 and 23 depend from Claim 18 and are deemed to be allowable as depending from an allowable base claim.

Accordingly, the Examiner's rejections under 35 U.S.C. § 102(e) have been traversed, and Applicant respectfully requests withdrawal of the rejections of Applicant's claims under 35 U.S.C. § 102(e).

Claims 7 and 8 Rejected Under 35 U.S.C. §103(a):

The Examiner rejected Claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Barile, Sr. ('096). The Examiner stated that providing removable seat and back cushions on the frame structure of Barile, Sr., would have been obvious to one with ordinary skill in the art.

In order to support a rejection under 35 U.S.C. § 103(a), "the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142, pg. 2100-121, 8th ed. "To reach a proper determination under 35 U.S.C. § 103(a), the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." *Id.* The first element in establishing a *prima facie* case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143, pg. 2100-122, 8th ed. The second element is that there "must be a reasonable expectation of success." *Id.* The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." *Id.*

Applicant respectfully submits that amended Claims 7 and 8, depending either directly or indirectly from amended Claim 1, include a combination of elements which are not made obvious by Barile, Sr., and Claims 7 and 8 are deemed allowable as

depending from allowable base claims. Both Claims 7 and 8 include the limitations of amended Claim 1, including a back frame cross-member having opposed flanged ends secured to respective right and left back support lower ends, and having right and left front support members which are spaced apart thereby lacking cross-member support therebetween. The limitations of Applicant's amended Claim 1, from which Claims 7 and 8 depend, are not disclosed, taught or suggested by Barile, Sr., either separately or in combination with Ware et al. In addition, there is no suggestion or motivation in the prior art to combine the teachings of the cited patents to make obvious Applicant's amended Claim 1, from which Claims 7 and 8 depend.

In view of the above, Applicant respectfully submits that amended Claim 7 and Claim 8 are not made obvious under 35 U.S.C. §103(a) by Barile, Sr., for the reasons set forth herein. Accordingly, the Examiner's rejections under 35 U.S.C. § 103(a) have been traversed, and Applicant respectfully requests withdrawal of the rejections of Applicant's claims under 35 U.S.C. § 103(a).

Claims 10, 12, 13, 16 and 17 Rejected Under 35 U.S.C. §103(a):

The Examiner rejected Claims 10, 12, 13, 16 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Ware et al. ('293). Regarding Claim 10, the Examiner stated that securing the rear frame support member of Ware et al. to the ends of the frame by flanges would have been obvious to one with ordinary skill in the art.

In order to support a rejection under 35 U.S.C. § 103(a), "the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142, pg. 2100-121, 8th ed. "To reach a proper determination under 35 U.S.C. § 103(a), the examiner must step backward in time and into the shoes worn by

the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." Id. The first element in establishing a *prima facie* case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143, pg. 2100-122, 8th ed. The second element is that there "must be a reasonable expectation of success." Id. The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." Id.

Applicant respectfully submits that amended Claim 10, having Claims 12, 13, 16 and 17 depending either directly or indirectly therefrom, include a combination of elements which are not made obvious by Ware et al. Specifically, Ware et al. teaches the need for a transverse front spring reinforcement bar (34) extending side to side between the two side members (28, 30) (see Col 2, lines 57-61, and Figs. 1, 2 and 4), and the need for a transverse rear spring reinforcement bar (50) extending side-to-side between the lower legs of the side members (42, 44) (see Col. 3, lines 18-20, and Figs. 1, 2 and 4). Applicant's amended Claim 10 distinctly claims a right and left front support member extended laterally inwardly from respective right and left seat members without a cross-member support extended therebetween.

In view of the above, Applicant respectfully submits that amended Claim 10 and dependent Claims 11 - 17 are not made obvious under 35 U.S.C. §103(a) by Ware et al., for the reasons set forth herein. Accordingly, the Examiner's rejections under 35 U.S.C. § 103(a) have been traversed, and Applicant respectfully requests that withdraw of the rejections of Applicant's claims under 35 U.S.C. § 103(a).

Claims Objected To:

The Examiner objected to Claims 4, 5, 11, 14, 15 and 20 - 22 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's guidance regarding allowability of the claims. Applicant amends the respective independent claims to include a combination of elements which are not disclosed separately by Barile, Sr. or Ware et al., nor are taught by the combination of Barile, Sr. and Ware et al.

New Claims:

Applicant respectfully submits new Claims 24 and 25 for the Examiner's review and entry into the application. Applicant's Claim 24 includes a combination of elements of Claims 1 and 4, and is deemed to be in condition for allowance over the cited art. Applicant's Claim 25 includes elements of Claim 5, and is dependent from new Claim 24, which is deemed to be in condition for allowance over the cited art.

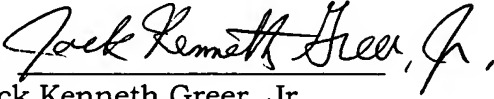
Summary:

In view of the amendments of Claims 1, 4, 10, 11, 14, 16, 18 and 20, submittal of new Claims 24 and 25, and arguments presented herein, it is respectfully submitted that the above-identified patent application including Claims 1 - 25 is in a condition for the issuance of a Notice of Allowance. Such action by the Examiner is respectfully requested. If, however, the Examiner is of the opinion that the claim amendments or other portions of the application are still not allowable, it will be appreciated if the Examiner will telephone the undersigned to expedite prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,

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